

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 21, 2009

D055639 In re Vivar on Habeas Corpus

The petition is denied.

D054875 In re A.A., a Juvenile

The judgment is reversed. This case is remanded to the juvenile court with directions to conduct a proper ICWA inquiry, determine whether ICWA applies, and, if necessary following the inquiry and determination, to order ICWA notice and conduct any further proceedings in compliance with ICWA. If, after notice, a tribe claims A.A. is an Indian child, the court shall proceed in conformity with ICWA; if no tribe claims A.A. is an Indian child, the court shall reinstate the judgment. Huffman, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D054876 In re H.N., Jr. et al., Juveniles

The judgment is affirmed. Huffman, J.; We Concur: McConnell, P.J., Benke, J.

D054733 In re Cody P., a Juvenile

The judgment is reversed. The case is remanded to the juvenile court for a new section 366.26 hearing with directions to order a new permanent plan of guardianship. The remittitur is to issue forthwith. McConnell, P.J.; We Concur: Nares, J., Haller, J.

D054993 In re Michael S., a Juvenile

The ICWA findings are reversed. The case is remanded to the juvenile court with directions to conduct a proper ICWA inquiry, determine whether ICWA applies, and, if found to apply following the inquiry and determination, order ICWA notice and conduct any further proceedings in compliance with ICWA. The remittitur is to issue forthwith. McDonald, J.; We Concur: Nares, Acting P.J., Haller, J.

D054336 Powers v. Pottery Barn, Inc.

Judgment reversed. Appellant to recover her costs of appeal. Benke, Acting P.J.; We Concur: Huffman, J., McIntyre, J.

D054169 People v. White

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., O'Rourke, J.

D055863 Jackson v. Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 21, 2009 (Continued)

D055663 In re Shockman on Habeas Corpus

The petition for writ of habeas corpus in re Shockman, No. D055663, will be considered at the same time as the pending appeal People v. Shockman, No. D053948.

D054086 ePlus Group, Inc. v. Banc of America Leasing & Capital, LLC

The judgment of dismissal is reversed and the case remanded for further proceedings in accordance with this opinion. ePlus to recover its costs on appeal. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 22, 2009

D052885 People v. Lopez

The petition for rehearing is denied.

D055187 People v. Nesby et al.

The judgment is affirmed. The court is directed to correct the clerical error in recording the sentence for the section 12022.53 subdivision (b) enhancement in counts 3 and 4, and to forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation. McIntyre, J.; We Concur: Nares, Acting P.J., Haller, J.

D055909 In re Rider on Habeas Corpus

The denial of a petition for writ of habeas corpus is not appealable.
The appeal is dismissed.

D055524 Hartnett v. San Diego County Office of Education et al.

Having reviewed the exhibits accompanying respondent's petition for writ of supersedeas, the court notes that, on August 10, 2009, appellants filed an ex parte application in the trial court in which they take the position that *Griset v. Fair Political Practices Commission* (2001) 25 Cal.4th 688, prevents them from appealing the ruling on the writ of mandate until all matters are resolved and there is a final judgment in the case, and ask the trial court to stay enforcement of the writ. (Exh. 11.) The exhibits also contain an August 11, 2009, minute order reflecting that the trial court has granted appellants a temporary interim stay of enforcement and set the matter for hearing on October 30, 2009. (Exh. 12.) In light of the concession and fact that the issue of enforceability is simultaneously pending in two different courts, it is appropriate to resolve the issue of appealability at the present juncture. The court requests that the parties submit letter briefs within 10 days of the date of this order explaining why the appeal should not be dismissed on grounds that the order is not yet appealable. Pending further order, the court will defer consideration of the petition for writ of supersedeas.

D055881 Rocha v. The Superior Court of San Diego County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 23, 2009

- D055565 In re Alve on Habeas Corpus**
The petition is denied.
- D054885 In re Andres V., a Juvenile**
The orders are affirmed. Irion, J.; We Concur: Benke, Acting P.J., McDonald, J.
- D055407 In re Antonio A., a Juvenile**
The appeals are dismissed. Aaron, J.; We Concur: McConnell, P.J., Huffman, J.
- D055561 In re Fkadu on Habeas Corpus**
The petition is denied.
- D055563 In re Lopez on Habeas Corpus**
The petition is denied.
- D055567 In re McCloud on Habeas Corpus**
The petition is denied.
- D053371 Hylton v. Frank E. Rogozienski, Inc.**
The order is affirmed. Plaintiff is entitled to costs on appeal. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.
- D055777 Nasland et al. v. Nasland et al.**
Because appellant Neal Nasland did not timely pay the filing fee, the appeal as to Neal Nasland only is dismissed. (Cal. Rules of Court, rule 8.100(c)(3).)
- D055320 People v. Sturdivant**
The judgment is affirmed.
McDonald, J; I Concur: McConnell, P.J.; Concurring in the Result: Huffman, J.
- D054163 PeoplePC, Inc. v. State Board of Equalization**
The request for publication of the opinion is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 24, 2009

D052252 People v. Hampton

The judgment is reversed and the cause remanded to the trial court with directions to permit Jamon Hampton to withdraw his guilty plea within 30 days after the remittitur is filed in the trial court. If no such motion is filed, the trial court shall reinstate the original judgment.

O'Rourke, J.; We Concur: McDonald, Acting P.J., Irion, J.

D054424 In re the Marriage of Boroojeni and Alleyne

The order is affirmed. Mother is entitled to costs on appeal.

McDonald, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D054308 People v. Davis

The judgment is affirmed.

O'Rourke, J.; We Concur: McDonald, Acting P.J., Aaron, J.

D054289 People v. Barnes

The judgment is affirmed.

O'Rourke, J.; I Concur: McIntyre, J.; Concurring in the Result: Haller, Acting P.J.

D053607 People v. Lee

The judgment is affirmed.

McDonald, J.; We Concur: McConnell, P.J., O'Rourke, J.

D054498 People v. Harvey

The judgment is reversed and remanded for possible retrial on the premeditation enhancement to count one for attempted murder. The People will have 60 days from the date of the remittitur in which to file an election to retry Harvey on this enhancement. If the People elect not to retry him, the trial court shall modify the judgment by striking the enhancement, and shall resentence Harvey accordingly. After conclusion of the proceedings, the court shall cause the abstract of judgment to be amended in a manner consistent with this disposition and send copies of the amended abstract to the appropriate law enforcement and custodial officials. In all other respects, the judgment is affirmed.

McIntyre, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D055807 BCBG Max Azria Group, Inc. v. Superior Court of San Diego County/Souder et al.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 24, 2009 (Continued)

D052299 In re the Marriage of Andrew

The orders are affirmed. Maia is entitled to costs on appeal.
McConnell, P.J.; We Concur: Huffman, J., McDonald, J.

**D055650 Engler v. Superior Court of San Diego County/Arthroscopic & Laser Surgery
Center of San Diego, L.P. et al.**

The petition is denied.

D052416 Behne v. Chodur et al.

D053551 Behne v. Chodur et al.

The \$90 cost item attributable to codefendant Warburton is stricken, and as so modified, the judgment and orders are affirmed. The trial court shall prepare an amended judgment. Costs on appeal are awarded to respondent.
Huffman, J.; We Concur: Benke, Acting P.J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 25, 2009

- D053366 Manoogian v. San Diego Unified School District**
The summary adjudication order and judgment are affirmed. Respondent San Diego Unified School District is awarded costs on appeal.
O'Rourke, J.; We Concur: McConnell, P.J., McDonald, J.
- D055247 People v. Wilson**
Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)
- D052970 People v. Mitchell**
The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Huffman, J.
- D054502 In re Marriage of Curran**
Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.
- D055711 Melissa O. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner Melissa O. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D055657 Anthony M. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner Anthony M. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D055653 G.R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner G.R. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.
- D055662 Marianne Z. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner Marianne Z. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. No timely petition for writ relief as to Armando R. has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
September 25, 2009 (Continued)

D055788 C.S. v. Superior Court of San Diego County/San Diego County Health and Human Service Agency
Because a proper notice of intent or declaration was not filed in accordance with this court's order of September 4, 2009, the matter is dismissed.

D055747 In re Goolsby on Habeas Corpus
The petition is denied.

D055716 In re Owen, Jr. on Habeas Corpus
The petition is denied.

D055853 Zaya v. Chaker
Appellant's "Motion to Lift Stay" filed September 23, 2009, is treated as a request for permission to appeal as directed by this court on September 11, 2009. The request is denied. (Code of Civ. Proc. section 391.7, subd. (b).) The appeal filed with the Superior Court on September 8, 2009, is dismissed.